

In the Matter of Certificate of Service No. A-25811
Issued to: CLEMENCE LEO DARCY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CLEMENCE LEO DARCY

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

On 19 April, 1949, and 22 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard at Seattle, Washington, to answer a charge of misconduct based upon four specifications. These specifications allege that Appellant did, while serving as deck maintenance man on the American SS STEPHEN W. KEARNY under authority of his duly issued Certificate of Service No. A-25811:

1. On or about 2 February, 1949, while said vessel was at a foreign port, fail to return on board in reasonable time after having been released from doctor as fit for duty.
2. On or about 3 and 4 February, 1949, while serving as above, fail to perform his duties without reasonable cause.
3. On 2, 4, 7, 8, 9 and 10 March, 1949, while serving as above, fail to turn to at 0800 and perform his duties between the hours of 0800 and 1700 by reason of being under the influence of intoxicants all in violation of good order and discipline.
4. On or about 19 March, 1949, at 0900, while serving as above, refuse the lawful command of his superior officer, the Chief Mate, to "turn to."

At the hearing, Appellant voluntarily waived his right to representation by counsel and entered a plea of "guilty" to the first three specifications but pleaded "not guilty" to the fourth specification. At the conclusion of the hearing, the Examiner found the first three specifications "proved by plea" and the fourth specification "proved" by the evidence. Based on these findings, the Examiner found the misconduct charge proved and he entered an order suspending Appellant's Certificate of Service No. A-25811 and all other valid certificates of service or merchant mariner's documents held by the Appellant. The suspension period was eighteen months from 22 April, 1949, which was the date of the Order.

In his appeal, Appellant states that the penalty, which takes away his livelihood, is entirely too severe for the charges preferred, inasmuch as he has been going to sea for approximately twenty-five years, or since 1913.

Appellant's previous record shows that he was admonished on 7 September, 1943, for misconduct aboard the SS ABNER NASH and that his certificate of service was suspended for four months, with nine months probation, on 12 July, 1945, for misconduct aboard the SS HENRY S. FOOTE.

FINDINGS OF FACT

On all the dates hereafter mentioned, the Appellant was serving as a member of the crew in the capacity of deck maintenance man, on board the American SS STEPHEN W. KEARNY, under authority of his Certificate of Service No. 25811.

On 2 February, 1949, while the ship was in Manila, Appellant received permission to leave the ship for a physical examination and he was told to report right back on the ship when he found out what was wrong with him. Appellant was examined and declared fit for duty but he did not return to the ship until sometime in the evening although he had been released by the doctor at eleven o'clock.

On 3 and 4 February, 1949, while the ship was still in Manila, Appellant failed to report for duty on board the ship.

On the 2, 4, 7, 8, 9, and 10 March, 1949, while the ship remained in Manila, the Chief Mate and the gangway watch failed repeatedly in their attempts to get Appellant out of his bunk by 0800 to "turn to." There is evidence to support the allegation that Appellant was drinking excessively on these days. Even the Appellant's own testimony helps to establish the fact that he performed none of his duties on these days and that he spent practically all of this time either ashore or in his bunk.

On or about 19 March, 1949, while the ship was in Yokohama, Japan, the Chief Mate several times ordered the Appellant to secure the jumper gear but Appellant ignored the orders and remained sitting down in his quarters.

The total fines imposed on the Appellant, by the Master of the KEARNY, for these offenses amounted to \$165.18 according to the copies of the ship's log which were introduced in evidence.

OPINION

The record of the hearing shows conclusively that the Appellant's failure to perform his duties and obey orders was a result of his personal attitude rather than due to any physical incapacity other than that which might have been caused by drinking.

Appellant made no attempt to justify his conduct on the basis of any illness. The failure to act, under such conditions, is equally within the definition of "misconduct" as are positive acts of "misconduct," since the effect on discipline is just as harmful.

Appellant admitted his breach of duty by pleading "guilty" to the first three specifications. There is substantial evidence to prove that the intoxicated state of the Appellant was indirectly coupled with his failure to perform his duties. Hence, he was incapacitated for duty by his own "misconduct." Although he pleaded "not guilty" to the fourth specification, Appellant admitted that he had refused to obey the command of the Chief Mate. His only justification for this disobedience was that "I don't have to work for no man.....anywhere I am at, on a Saturday." It is well established that a seaman who questions his superior officer's orders does so at his own peril.

Appellant's complete lack of respect for authority is exemplified by his constant interruptions during the hearing and his statement that the Chief Mate could not charge him with these offenses. Such a belligerent attitude towards lawfully constituted authority is certainly incompatible with the high degree of discipline which must be maintained on board ships. This characteristic refusal to recognize lawful superiors is obviously aggravated when Appellant indulges excessively in whiskey. Apparently, Appellant lacks either the desire or ability to stop drinking to such an extent that it interferes with his duties and responsibilities. The hearing was continued several times due to Appellant's inability to attend as a result of drinking about two quarts of liquor a day for a week. And, as Appellant himself stated, two quarts of liquor a day "is a lot of whiskey."

It is the policy of the Coast Guard to take into consideration any fines imposed, on the person charged, for the same offenses for which he is later tried by the Coast Guard. Despite this policy and the fact that Appellant was fined approximately \$165 on the ship for these offenses, I do not feel that this penalty is too severe as is contended by the Appellant in his appeal.

Appellant's lack of concern about the possibility of losing his certificate is evidenced by his habitual absence from the hearing proceedings. On the one occasion when he did appear at the hearing sober, Appellant stated that he did not want to go to sea anyway and that he considers the Examiner did him a favor by taking his papers.

Under such circumstances, there is no reason why the Examiner's order should not be sustained and many reasons why it should be upheld.

CONCLUSION AND ORDER

The order of the Examiner dated 22 April, 1949, should be, and it is AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 30th day of June, 1949.